

6/14/04 - (20)

TOWN OF ACTON

Building Department

INTERDEPARTMENTAL COMMUNICATION

To: Board of Selectmen Date: June 7, 2004

From: Garry A. Rhodes, Building Commissioner

Subject: Violations of traffic circulation
Brookside Shops 145 Great Road

The circulation of traffic at the Brookside Shops continues to be a problem. I have notified Brookside Shops on four occasions of violations observed. I have discussed the problem at length with Mr. Levine. I have suggested to him a possible solution and he appears to be amendable.

I have suggested a two prong attack. I have suggested to him that a gate be installed on the end of the service road closest to Esterbrook Road. The gate would open by an electronic eye or push button. In either case it would open from the mall side only.

The second aspect of enforcement would be for the mall to request the enforcement of the traffic signage by the Acton Police Department. The mall would need to request the signs be adopted into the traffic rules and orders as provided in MGL C40 § 18.

I am bringing this to your attention because in both cases I feel the possible solutions would require the Board to amend the Site Plan Special Permit. I have attached a draft decision for your consideration.

Currently the Decision has two sections that would in my opinion need to be amended. I have underlined the additions and indicated the areas deleted. They are as follows;

- 5.) The principal entrance and exit for customers to the development will be from Great Road. There will be a secondary access for service trucks, employee parking and future access to gifted land (finding #12 and condition #2.8) from Great Road, running behind the building and exiting on Esterbrook Road. The BOARD finds that the service driveway, if used as designed, will help to prevent conflicts between service truck traffic and customer traffic on site and will minimize traffic exiting the site and going east on Esterbrook. In order to insure the service road is used as designed (one-way) the applicant shall place an automated gate activated by electronic eye or push button. The gate shall be located on the Esterbrook end of the service road and as approved by the Building Commissioner and shall be so located to allow vehicles to turn around if they happen to be traveling east on Esterbrook Road trying to enter the mall. In order to mitigate any adverse impact of deliveries and trash pick-up the BOARD finds that it is necessary and appropriate to prohibit deliveries and trash pick-up before 6:30 AM or after 10:00 PM. This condition shall be included in all leases for space in the mall hereafter entered into. In addition, the BOARD requires additional signage at the entrance of the service road indicating that it is not a mall access, but can be used only by employees and deliveries or access as provided in condition 2.3.

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2.3) Deliveries including trash pickup shall be prohibited before 6:30 AM and after 10 PM. The lease of each tenant shall include a clause prohibiting deliveries and trash-pick-up before 6:30 AM and after 10 PM. A directional sign, not to exceed 12 square feet, shall be installed at the service entrance as provided in finding five. The gate shall be installed within 60 days of the date of this amendment and the expiration without appeal of any appeal period. The applicant shall also request the Board of Selectmen accept the traffic control signage into the "Traffic Rules and Orders" as provided in MGL C90 §18 within 45 days of the date of this amendment and the expiration without appeal of any appeal period. The Building Commissioner as enforcement official of the Decision shall find that if the gate is operational and the applicant has requested the Board of Selectmen to accept the directional signage as aforesaid, and previous use of the rear service entrance/driveway are not zoning violations and any future use of the rear service entrance/driveway shall not be zoning violations so long as the Applicant maintains the gate directional signage and future leases contain limitations as to hours of usage, all as aforesaid.

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Amended DECISION of the Board of Selectmen (hereinafter the Board) on the motion from the Board for the property located at 145 Great Road, Acton, Massachusetts. Said property is shown on Acton Town Atlas Map F-4 Parcel 37.

This Decision is in response to a request from the Building Commissioner and supported by the applicant submitted to the Board on June 7, 2004 for an amendment to the Site Plan Special Permit/Special Permit.

The Board of Selectmen, after reviewing the request, finds this amendment is not significant to the public interest and that such amendment is not inconsistent with the purpose and intent of the Bylaw and with the terms of the original permit and, therefore, will not require a public hearing. Board members F. Dore` Hunter, Peter Ashton, Walter Foster and Robert Johnson were present throughout the proceedings.

The record of the proceedings and submissions upon which this permit is based may be referred to in the Office of the Town Clerk, or the Office of the Board.

Exhibit I

An IDC from the Building Commissioner dated June 7, 2004 requesting an amendment to the existing permit.

1.0 **Findings and Conclusions**

Based upon its review of the exhibits and records of the proceedings, the Board found and concluded that:

- 1.1 The site is subject to Site Plan Special Permit # 07/26/00-372 revised and Special USE Permit #08/25/00-373 revised. Those decisions will remain in full force and effect except as herein modified and shown on the plan.
- 1.2 The Applicant and the Building Commissioner have worked together to resolve an alleged zoning violation where the Building Commissioner cited the applicant for not preventing vehicles from traveling contrary to the one-way traffic pattern as shown on the approved plan.
- 1.3 **Finding** # 5 is hereby deleted and replaced with the following;

The principal entrance and exit for customers to the development will be from Great Road. There will be a secondary access for service trucks, employee parking and future access to gifted land (finding #12 and condition #2.8) from Great Road, running behind the building and exiting on Esterbrook Road. The BOARD finds that the service driveway, if used as designed, will help to prevent conflicts between service truck traffic and customer traffic on site and will minimize traffic exiting the site and going east on Esterbrook. In order to insure the service road is used as designed (one-way) the applicant shall place an automated gate activated by electronic eye or push button. The gate shall be located on the Esterbrook end of the service road and as approved by the Building Commissioner and shall be so located to allow vehicles to turn around if they happen to be traveling east on Esterbrook Road trying to enter the mall. In order to mitigate any adverse impact of deliveries and trash pick-up the BOARD finds that it is necessary and appropriate to prohibit deliveries and trash pick-up before 6:30 AM or after 10:00 PM. This condition shall be included in all leases for space in the mall hereafter entered into. In addition, the BOARD requires additional signage at the entrance of the service road indicating that it is not a mall access, but can be used only by employees and deliveries or access as provided in condition 2.3.

- 1.4 **Conditions and Required Modifications to Revised Plan** # 2.3 is hereby deleted and replaced with the following;

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Deliveries including trash pickup shall be prohibited before 6:30 AM and after 10 PM. The lease of each tenant shall include a clause prohibiting deliveries and trash-pick-up before 6:30 AM and after 10 PM. A directional sign, not to exceed 12 square feet, shall be installed at the service entrance as provided in finding five. The gate shall be installed within 60 days of the date of this amendment and the expiration without appeal of any appeal period. The applicant shall also request the Board of Selectmen accept the traffic control signage into the "Traffic Rules and Orders" as provided in MGL C90 § 18 within 45 days of the date of this amendment and the expiration without appeal of any appeal period. The Building Commissioner as enforcement official of the Decision shall find that if the gate is operational and the applicant has requested the Board of Selectmen to accept the directional signage as aforesaid, any previous use of the rear service entrance/driveway are not zoning violations and any future use of the rear service entrance/driveway shall not be zoning violations so long as the Applicant maintains the gate, directional signage, and future leases contain limitations as to hours of usage, all as aforesaid.

Therefore, the Board voted to **GRANT** the requested amendment subject to the following conditions and limitations.

2.0 **Conditions**

- 2.1 This Decision applies only to the requested amendment. Other permits or approvals required by the Acton Zoning Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this Decision.

3.0 **Appeals**

Any person aggrieved by this Decision may appeal pursuant to the General Laws, Chapter 40A, Section 17 within 20 days after the filing of this Decision with the Acton Town Clerk.

Witness our hand this day of ,2004

F. Dore' Hunter, Chairman

I, Christine Joyce, hereby certify that this is a true copy of the Decision of the Board of Selectmen.

Christine Joyce, Recording Secretary

Date filed with Town Clerk

Edward Ellis, Town Clerk

TO WHOM IT MAY CONCERN: This is to certify that the 20 day appeal period on the Decision of Tashmoo Cove Realty, Inc. has passed and there have been no appeals made to this office.

Date

Edward Ellis, Town Clerk

**D'AGOSTINE, LEVINE, PARRA & NETBURN, P.C.**

Attorneys at Law

Julian J. D'Agostine
Louis N. Levine
F. Alex Parra
Cathy S. Netburn
Lisa Bergemann

268 Main Street | P.O. Box 2223 | Acton, MA 01720
tel 978.263.7777
fax 978.264.4868

FAX COVER SHEET

To: Garry Rhodes Fax #: 978-264-9630
Acton Building Department

cc: Ross Hamlin 9-1-603-726-7329

From: F. Alex Parra, Esq./um Date: June 11, 2004

Subject: 145 Great Road, Acton Pages: 1 (including cover sheet)
Brookside Shops

☐ Please review and contact me ☐ For your information ☐ I will contact you to discuss ☐ Original in mail to you

COMMENTS:

This will confirm that if the Selectmen adopt the revisions to the special permit proposed in your memo of June 7, 2004, with the modifications faxed to you June 10, 2004, and the zoning violations are withdrawn, the appeal to the Board of Appeals will be withdrawn and the amendment to the Special Permit will be accepted by our client.